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CLERK OF COURT
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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In pro se

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Jane Doe

Plaintiff,

vs.

CITY OF SAN MATEO, et al.,

Defendants.

Case No. C 07-05596 SI

PLAINTIFF JANE DOE'S EX PARTE
APPLICATION TO SEAL RECORDS;
MEMORANDUM OF POINTS AND
AUTHORITIES ;DECLARATION OF
JANE DOE; ORDER

Judge: Hon. Susan Illston

Plaintiff, Jane Doe, hereby respectfully requests, pursuant to Civil Local Rules 7-10 and 79-5, an order sealing Defendant, San Mateo County's, Motion to Dismiss lodged with the court on June 20, 2008 along with this motion to seal.

The plaintiff also requests that her home address and contact information be sealed from all publicly filed court documents in this case and revealed to attorneys' in this case only.

This motion is made pursuant to the Plaintiff's Constitutional Right to Privacy, and Rules 243.1 and 243.2 of the California Rules of Court.

I

INTRODUCTION

This case arises out of the defendant's discrimination against the plaintiff as a woman and victim of a rape, a conspiracy to discriminate, and other constitutional violations. The plaintiff was raped and sodomized by an off-duty police officer while she was moving in and out of consciousness and admitted to ejaculating on her face when he was done.

The plaintiff filed this case under the pseudonym "Jane Doe" in order to protect her constitutional right to privacy. To release personal identifying information of plaintiff and details of the rape to the public would cause further undue, embarrassment, humiliation, and emotional distress.

The Plaintiff has been threatened, stalked, and harassed by police officers in relation to events in this case. The plaintiff has also been contacted by the media for unwanted publicity. The plaintiff wishes to keep her true identity, address, and other personal identifying information private to prevent further harm from law enforcement officers and others.

II

MEMORANDUM OF POINTS AND AUTHORITIES**CONSTITUTIONAL RIGHT TO PRIVACY**

The right to privacy and the right to prevent the dissemination of confidential identifying information of a rape victim and intimate details of the rape is a constitutional right rooted in the fourteenth amendment. See *Eastwood v. Dept. of Corrections of the state of Okl.*, 846 F.2d 627, 631 (10th Cir. 1988). It concluded that information regarding private sexual matters warrants constitutional protection against public dissemination.

1 In *The Florida Star v. B. J. F.*, 491 U.S. 524 (1989), appellee, was robbed and sexually
2 assaulted. When she consequently reported it to police, her name was published in the media. In
3 filing her lawsuit, appellee used her full name in the caption of the case. On appeal, the Florida
4 District Court of Appeal sua sponte revised the caption, stating that it would refer to the appellee
5 by her initials B.J.F., "in order to preserve [her] privacy interests." 499 So.2d 883, 883, n. (1986).

6 In *United States v. Westinghouse Electric Corp.*, 638 F.2d 570, 577 (3d Cir. 1980) the
7 court held that information about one's body and state of health is a matter which the individual is
8 ordinarily entitled to retain within the private enclave where he may lead a private life).

9 The Supreme Court in *Whalen v. Roe*, 429 U.S. 589 (1977) noted that the right to privacy
10 includes an individual interest in avoiding disclosure of personal matters.

11 In *Kallstrom v. City of Columbus*, 136 F.3d 1055 (6th Cir. 1998), the court held that
12 undercover police officers, whose personal files had been released to a violent gang which they
13 had infiltrated and were testifying against, possessed a privacy interest in preserving their lives,
14 personal security, and bodily integrity. This case is similar, in that the plaintiff possesses the same
15 privacy interest of preserving her personal security, and bodily integrity from retaliation of police
16 officers.

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19 **California Criminal Code ensures that personal identifying information**
20 **of victims of a crime are kept confidential**
21

22 A victim of a sexual assault can protect his or her name and address from becoming public
23 record pursuant to section 293 by requesting the information be withheld pursuant to Government
24 Code section 6254, subdivision (f) (2).

25 Under section 293.5, victims of a sex offense can be identified as Jane or John in court
26 records and proceedings. Moreover, subdivisions (c) and (d) preclude a law enforcement agency
27 from releasing the name and address of a sexual assault victim to anyone.
28

1 The Victims of Crime Act of 1984 and Title 17 of California Penal Code Section 679
2 ensures that all victims of a crime be treated with dignity, respect, and sensitivity to protect those
3 who have suffered the trauma of victimization.. This includes the rights to privacy, the right not to
4 be threatened, and effective enforcement of protective orders .

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6 **The Plaintiff's overriding interest will be prejudiced if the record is not sealed**
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8 California Rules of Court Rule 243.2 (a) and (b) provide that a record may be filed under
9 seal only under a court order granted pursuant to a noticed motion and facts sufficient to justify
10 the sealing. Rule 243.1 (d) provides that a court may order that a record be filed under seal if it
11 expressly finds that: (1) There exists an overriding interest that overcomes the right to public
12 access to the record; (2) The overriding interest will be prejudiced if the record is not sealed..

13 In this case, the overriding interest of the plaintiff's right to privacy and to prevent public
14 dissemination of the details of the rape and personal identifying information, overcomes the
15 public's right to access to the record. The plaintiff's overriding interest will be prejudiced if the
16 record is not sealed.

17
18 **Every court has supervisory power over its own records and files**
19

20 Every court has supervisory power over its own records and files. Access has been denied
21 where court files might have become a vehicle for improper purposes." *Nixon v. Warner*
22 *Communications, Inc.* 435 U.S. 589, 598, 98 S.Ct. 1306, 1312, 55 L.Ed.2d 570. It took note of the
23 cases that have recognized that the decision as to access is one best left to the sound discretion of
24 the trial court a discretion to be exercised in light of the relevant facts and circumstances of the
25 particular case.
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1 To deny rape victims the right to privacy and the right to keep their personal identifying
2 information hidden would have a chilling effect on all victims of sex crimes. Victims would shy
3 away from seeking help from the judiciary and would not pursue restitution in the courts or any
4 other legal action.

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6 **III**
7 **CONCLUSION**
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9 For the reasons set forth above, the plaintiff respectfully asks this court to grant this
10 motion to seal San Mateo County's Motion to Dismiss, logged with the court on June 20, 2008,
11 along with this motion to seal.

12 The plaintiff also requests that her home address and contact information be sealed from
13 all publicly filed court documents in this case and revealed to attorneys' in this case only.

14
15 Dated: June 22, 2008

Respectfully submitted,

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18 By: 

19 Jane Doe, plaintiff in pro se
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DECLARATION OF PLAINTIFF JANE DOE

I, plaintiff Jane Doe, declare:

1. I am a party to this action or proceeding appearing in pro persona in this action.
2. The facts set forth in the Memorandum of Points and Authorities filed herewith are true and correct to the best of my knowledge.
3. I filed this case under the pseudonym "Jane Doe" in order to protect my privacy.
4. To release personal identifying information and details of my sexual assault to the public would cause further, embarrassment, humiliation, and emotional distress.
5. I have been threatened, stalked, and harassed by police officers in relation to events in this case.
6. I have been contacted by the media for unwanted publicity.
7. I wish to keep my true identity, address, and other personal identifying information private to prevent further harm from law enforcement officers and others.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on May 2, 2008 in San Francisco, California.

Dated: June 22, 2008

By: _____



Jane Doe, plaintiff in pro se